

# MMPA Bulletin

NMFS Office of Protected Resources

June/July 1995

## Proposed Marine Mammal-Fishery Interactions Regulations Published

On June 16, 1995, NMFS published in the *Federal Register* proposed regulations for a new regime to govern interactions between marine mammals and commercial fisheries. The new regime will replace the Interim Exemption for Commercial Fisheries with a long-term program to authorize fisheries that incidentally seriously injure and kill marine mammals and, ultimately, to reduce interactions to a level approaching a zero mortality and serious injury rate. A proposed list of fisheries based on new classification criteria is included in the proposed regulations. The following summarizes the major changes:

**Fishery classification criteria.** The MMPA requires that commercial fisheries be placed in one of three categories based on whether the fishery has a frequent, occasional or remote likelihood of incidental serious injury and mortality of marine mammals. Under the Interim Exemption, "frequent", "occasional" and "remote likelihood" were defined in terms of the total marine mammal take per vessel per 20 days. The proposed regulations define "frequent", "occasional" and "remote likelihood" in terms of how many marine mammals of a particular stock are incidentally taken relative to that marine mammal stock's potential biological removal (PBR) level. The proposed criteria are as follows:

- Category I fishery:** A commercial fishery that is, by itself, responsible for the annual removal of 50% or more of any stock's PBR level.
- Category II fishery:** A commercial fishery that is, collectively with other fisheries, responsible for the annual removal of more than 10% of any marine mammal stock's PBR level and is by itself responsible for the annual removal of between 1% and 50% exclusively, of the PBR level for any stock.
- Category III fishery:** A commercial fishery that is, collectively with other fisheries, responsible for the annual removal of under 10% of any marine mammal stock's PBR or more than 10% of any marine mammal stock's PBR but is, by itself, responsible for less than or equal to 1% of that stock's PBR.

These criteria incorporate a stock-specific approach rather than a rate-based approach. This approach would increase the ability of NMFS to target management actions to those fisheries with the largest impact on particular marine mammal stocks. It would also eliminate several on-going difficulties associated with using a per-vessel rate of take. For example, under the present system a small fishery could have the same per-vessel rate of take as a large fishery, yet have less of an impact on a stock. In addition, if marine mammal populations increase and fishing effort remains constant, the per-vessel take rate may also increase, causing a fishery to be arbi-

trarily placed into a higher category. The proposed approach would allow NMFS to initiate more proactive management efforts for fisheries that take species with low and/or declining populations. Fisheries affected by the new criteria are highlighted on page 2 of this *Bulletin*.

**Data used to classify fisheries.** Observer data extrapolated to estimate the total kill of marine mammals in a particular fishery were used when possible. If observer data were not available, several other data sources were tapped, such as fishers' logbook data, fishers' reports, confirmed anecdotes, stranding information, and analogous situations. Such data were not extrapolated, but were used as minimum estimates of the annual number of stock-specific serious injuries and mortalities in a fishery. Other data used included historical patterns of marine mammal takes and the expected magnitude of takes resulting from changes in fishing effort or fishing technology.

**Reporting requirements.** Under the Interim Exemption, fishers in Category I and II fisheries were required to fill out daily logbooks and to submit the logbooks every year. Under the proposed regulations, logbooks would no longer be required. Instead, all fishers are required to report all marine mammal injuries and deaths that occur incidental to a fishery to NMFS on a postage-paid form within 48 hours of the end of a fishing trip. The reporting form is currently under development and should be ready by January 1996.

**Monitoring of incidental mortalities and serious injuries.** Under the Interim Exemption, NMFS could require vessels participating in Category I fisheries to carry an observer. Under the new section 118, NMFS may place observers on any Category I or II vessel. NMFS may also require vessels in Category III fisheries to carry an observer if it can be shown that the fishery is having an immediate and significant adverse impact to a stock listed under the ESA and if emergency regulations have been published by NMFS to mitigate this impact.

**Takes of ESA-listed species.** The 1994 MMPA amendments require fishers to obtain a separate authorization to take marine mammals listed as threatened or endangered under the ESA if the take can be determined to have no more than a "negligible impact" on the stock. The proposed list of fisheries included with the proposed rule contains a list of species that each fishery interacts with. NMFS specifically requests comments on those fisheries that have takes of species listed under the ESA and on the magnitude of the takes.

Comments on the proposed regulations and the authorization to take listed species must be submitted to NMFS by July 31, 1995. Comments on the proposed list of fisheries must be submitted by September 14, 1995. In addition, a number of regional public hearings are scheduled throughout the end of June and July. For more information, call Robyn Angliss at 301/713-2322.



National Marine Fisheries Service, Silver Spring, MD 20910

### Commercial Fisheries That Have Changed Categories Under the Proposed Fishery Classification Criteria

#### Atlantic Ocean

##### Category II to Category I

Atlantic Ocean, Caribbean, Gulf of Mexico tuna, shark, sword fish longline

##### Category III to Category II

Atlantic mid-water trawl (includes squid and mackerel trawl fisheries)

North Carolina roe mullet stop net

North Carolina haul seine (new fishery)

Gulf of Maine, U.S. mid-Atlantic menhaden purse seine

#### Pacific Ocean

##### Category III to Category II

AK Southeast salmon purse seine

AK Bering Sea and Aleutian Islands groundfish trawl

AK pair trawl (new fishery)

OR swordfish/blue shark surface longline fishery (new fishery)

##### Category II to Category III

AK state waters sablefish longline/set line (includes Prince William Sound)

AK Prince William Sound set gillnet

CA/OR/WA salmon troll

### In The Pipeline...

#### Bering Sea Ecosystem Workshop

The Bering Sea Ecosystem Workshop previously scheduled for June 14-15 in Anchorage was postponed until September. The postponement came at the request of Alaska Native groups who were unable to attend the June workshop due to scheduling conflicts. An announcement will be made regarding the September workshop as soon as the dates have been finalized.

#### Stock Assessment Reports

Drafts of final stock assessment reports (Atlantic, Pacific, Alaska) have been completed and are undergoing final editorial revisions. The schedule calls for their release to the public in July. Electronic versions will be available immediately after the *Federal Register* notice of completion is published and printed copies will be available when duplication is completed. Electronic copies of these reports will be posted on the NMFS home page on the World Wide Web (see page 4).

The **MMPA Bulletin** is published by the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, (301) 713-2319. Send comments and suggestions to the above address, Attn: MMPA Bulletin, or fax to (301) 713-0376

**Office Director:** William W. Fox, Jr.

**Deputy Office Director:** Patricia Montanio

**Editors:** Laurel Bryant and Vicki Cornish

## Request for Proposals to Facilitate Take Reduction Teams

NMFS has decided that expertise in professional environmental dispute resolution is necessary to design and convene Take Reduction Teams and to develop Take Reduction Plans (see *MMPA Bulletin*, April/May 1995). The request for proposals for this activity was released on June 22, and proposals will be accepted until July 14, 1995

Our twofold objective is to place a contract with an organization with a background in professional environmental dispute resolution that would: 1) facilitate the development of a series of Take Reduction Teams across the country, each of which would focus on reducing bycatch of a "strategic" stock(s) in regional commercial fisheries, and 2) facilitate the convening of each of these teams over a six month period, resulting in the development of Take Reduction Plans.

Take Reduction Team are proposed for the following fisheries/marine mammal stock complexes:

- Gulf of Maine Harbor Porpoise
- Atlantic Offshore Cetaceans and Beaked Whales
- Pacific Offshore Cetaceans and Beaked Whales
- Atlantic Baleen Whales
- Atlantic Coastal Bottlenose Dolphins
- Alaska Marine Mammals/Eastern and Western Steller Sea Lions

Following the closing date for the request for proposals, NMFS' Office of Protected Resources will review the proposals. It is anticipated that the contract will be awarded approximately six weeks following the review of all proposals received, and that the selection of individuals to participate on all the Take Reduction Teams will be completed by approximately October 1, 1995. NMFS would like to have draft Take Reduction Plans available for public review by Spring, 1996. For more information, call Michael Payne at 301/713-2322.

## New Program Logo Being Developed



NMFS is in the process of developing a new logo for the fisheries interaction program. Decals and exemption certificates issued to vessel owners under the Interim Exemption displaying the logo to the left will not be valid after January 1, 1996.

The new logo will be used on posters and other materials to inform fishers and the public of the new authorization requirements and on decals issued to registered fishers. Look for the new logo in the next few months...

## New Guidelines Proposed for the Zero Mortality Rate Goal

The MMPA Amendments of 1994 call for a reduction in the incidental serious injury and mortality of marine mammals in commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate within seven years, or by April, 2001. The proposed rule to implement Section 118 of the MMPA proposes a series of biological objectives to determine when the Zero Mortality Rate Goal (ZMRG) has been met.

Now that a definitive deadline has been imposed for attaining the ZMRG, the fishing industry, other interested constituents, and the government must develop objective standards to determine when the ZMRG has been reached, as well as gauge any progress toward its attainment. Developing specific objectives raises three fundamental questions:

1) what does insignificant mean? 2) how close to zero do we need to approach? and 3) what rate should we use as the measurement?

First, in determining what is insignificant, it is helpful to review what is meant by significant. For example, a statistician may think in terms of probabilities, whereas an economist may focus on the level of additional effort versus output as significant in determining an optimum level of efficiency. On the other hand, many people may regard "a lot" of something as being significant. NMFS has proposed that the ZMRG should address the biological significance of levels of incidental mortality and serious injury to marine mammal stocks.

The next step is to identify the level of loss that could be considered biologically insignificant to a marine mammal stock. The MMPA gives us an important starting point with the Potential Biological Removal level, or PBR. The PBR is the maximum number of marine mammals that could be removed from a stock (by other than natural causes) and still allow that stock to reach and maintain its Optimum Sustainable Population (OSP). Therefore, NMFS concluded that the removal of a small portion of a stock's PBR could be considered insignificant to the stock's ability to reach and maintain OSP.

In December, 1992, NMFS proposed to Congress that a level of mortality or serious injury that would delay recovery of a severely depleted stock of marine mammals by no more than 10% could be considered biologically insignificant. Modeling exercises confirmed that limiting incidental removals to 10% of a stock's PBR would cause the population to delay achieving OSP by no more than 10%. Therefore, NMFS proposed that if total fishery-related mortality and serious injury is less than 10% of PBR for a marine mammal stock, it will be determined as "insignificant" for that stock. In addition, fisheries that

interact with declining, depleted, threatened, or endangered stocks of marine mammals will be examined more closely to ensure that any incidental loss from these stocks is, indeed, insignificant.

In cases where the total loss for a given stock exceeds 10% of PBR, some fisheries may still contribute only a small (or insignificant) amount of that loss. Therefore, NMFS

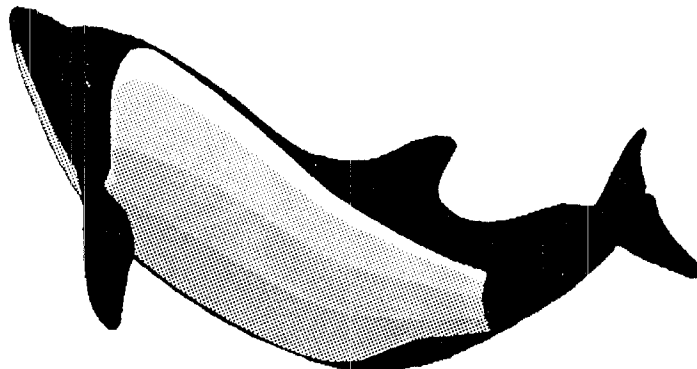
proposes a second tier of consideration for individual fisheries when total incidental loss exceeds 10%. A fishery contributing removals of no more than 1% of a stock's PBR, even when total loss due to all fisheries exceeds 10%, would be determined to have an insignificant effect on that stock. It is important to note that the proposal for ZMRG is the same as the criteria for determining Cat-

egory III fisheries in the proposed list of fisheries.

Second, incidental losses must "approach a zero rate". Some have argued that "zero means zero". Others have argued that incidental losses are accidental and despite a fishery's best efforts, some marine mammals may still get caught incidentally in their nets. NMFS proposes to control incidental loss of marine mammals through regulation or restrictions only to the point that these losses are biologically insignificant to marine mammal stocks. However, NMFS would continue efforts with the fishing industry to design, refine and use technologies and methods that are more "marine mammal friendly".

Lastly, what rate should we use? Since the 1988 Amendments to the MMPA were passed, NMFS has looked primarily at the number of marine mammals caught by an individual vessel over a 20-day period. An alternative is the number of marine mammals killed by a given fishery in a year. Unfortunately, these rates are not directly related to biological significance. In the first case, a fishery with a large number of vessels would remove more marine mammals than a small fishery if the per-vessel rates were the same. In the second case, the mortality of one right whale, an endangered species, has more biological significance to a population than the mortality of one California sea lion.

The proposed definition for attaining the ZMRG has been developed around the biological significance of the magnitude of the incidental mortality and serious injury of marine mammals of a particular stock. This approach is biologically justifiable, and progress toward it would be based upon the best available scientific information. NMFS looks forward to receiving your comments on the ZMRG and other aspects of the proposed regulations. For more information, call Tom Eagle at 301/713-2322.



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## Process to Take Marine Mammals by Harassment Simplified

On May 31, 1995, NMFS published a proposed rule to amend the small take regulations (50 CFR Part 228) to implement an expedited process by which U.S. citizens could apply for an authorization to incidentally (not intentionally) take small numbers of marine mammals by harassment without the need to issue specific regulations governing the taking of marine mammals for each and every activity. Harassment in this context does not include serious injuries or lethal removals. As authorized under the MMPA Amendments of 1994, the rule specifies statutory time limits for NMFS' review, publication, and public notice and comment on any applications for an authorization that would be granted. The rule also details the requirements for submission of a plan of cooperation as well as for scientific peer review of an applicant's monitoring plans in cases involving activities that may affect a species' or stock's availability for subsistence.

If implemented, this rule would result in a more streamlined and cost-effective method for obtaining small take by incidental harassment authorizations, without lessening the MMPA's protection of species and stocks of marine mammals. The comment period for this proposed rule was originally scheduled to close on July 17,

1995, but has been extended until October 13, 1995. For more information, call Ken Hollingshead at 301/713-2055.

### NMFS Documents and the MMPA Bulletin are On-Line

The Environmental Assessment for the Proposed Regulations to implement Section 118 of the MMPA is available on the World Wide Web at <http://kingfish.ssp.nmfs.gov:80/home-page.html>. Accessing the NMFS home page will allow you to download a text-only ASCII version of the Environmental Assessment. Final stock assessment reports may also be downloaded from the NMFS home page when they become available.

As always, the *MMPA Bulletin* is also available as an ASCII file on the NMFS home page. If you would like to use any of the *Bulletin* articles, just send us a note indicating where any or all of the articles will be reproduced. E-mail this information, or any questions you might have on access to the NMFS Home Page, to: [Thomas\\_McIntyre@ssp.nmfs.gov](mailto:Thomas_McIntyre@ssp.nmfs.gov).

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**National Marine Fisheries Service  
Office of Protected Resources  
1315 East-West Highway  
Silver Spring, MD 20910**